

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARSHALL J. MARTIN, et al,	:	
	:	Case No. 1:04cv631
Plaintiffs,	:	
	:	District Judge Susan J. Dlott
v.	:	
	:	
DAVID M. HENRY, et al.	:	
	:	
Defendants.	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Plaintiffs brought this action against various Clinton County defendants arising from a search of their property and subsequent arrest for drug trafficking. Plaintiffs seek equitable relief and money damages under 42 U.S.C. § 1983. Defendant Estes, a detective with the Clinton County Sheriff's office, and defendant Henry, assistant Clinton County Prosecutor, moved for judgment on the pleadings asserting, *inter alia*, that a plaintiff could not recover damages for an allegedly unconstitutional conviction or imprisonment when the criminal charges against the plaintiff had not yet been adjudicated, and that the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971) barred plaintiffs' federal claim. (Doc. 14.)

The Magistrate Judge reviewed the pleadings and filed with this Court on September 13, 2005 a Report and Recommendation as to defendants Henry and Estes' motion for judgment on the

pleadings (Doc. 21). Subsequently, the plaintiffs filed an objection to such Report and Recommendation (Doc. 23.)¹

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all the filings in this matter. The Court also takes judicial notice that the state court criminal proceeding against plaintiff Roberts, *State of Ohio v. Roberts*, No. CRI 20025162, Court of Common Pleas, Clinton County, Ohio, was dismissed with prejudice on September 29, 2005. Upon consideration of the foregoing, the Court determines that such Recommendation should be adopted on all but the issues pertaining to plaintiff Roberts, those issue having been rendered moot by the State's dismissal of the criminal action against her.

As noted by Magistrate Hogan, "[a] § 1983 civil rights action seeking money damages on the basis of an allegedly unconstitutional conviction or sentence will not lie unless the plaintiff has already succeeded in having the conviction or sentence invalidated." (Doc. 21 at 5 (citing *Heck v. Humphrey*, 512 U.S. 477, 487 (1994); *Chatman v. Slagle*, 107 F.3d 380, 382 (6th Cir. 1997).) Because the State dismissed its action against her, both Roberts' damages claim under § 1983 and her request for an order enjoining the underlying state prosecution have been rendered moot.

Therefore, for the reasons stated in Magistrate Judge Hogan's Report and Recommendation, IT IS ORDERED THAT the motion of Defendants Assistant Clinton County Prosecutor David M. Henry and Detective Douglas Estes for Judgment on the Pleadings (Doc. 14) is hereby GRANTED.

¹ Plaintiffs filed a Notice of Appeal on October 6, 2005 (Doc. 24) as to this Court's September 29, 2005 Order adopting the Magistrate's Report and Recommendations granting the motions to dismiss of defendants Rudduck and Aspacher (Doc. 22). At the time of the appeal, this Court had not yet adopted the Magistrate's Report and Recommendation pertaining to defendants Henry and Estes. Accordingly, the Court of Appeals was without jurisdiction to review the Magistrate's Report and Recommendation concerning defendants Henry and Estes. *Martin v. Henry*, No. 05-4323 (6th Cir. filed Aug. 1, 2006), at 2.

Plaintiff Roberts' claim against defendants Henry and Estes for injunctive relief is hereby DISMISSED as moot and her § 1983 claim for damages is hereby DISMISSED as moot. Plaintiff Martin's claim against defendants Henry and Estes for injunctive relief is hereby DISMISSED as moot and his § 1983 claim for damages is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge